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*Amendment*  
*Attorney Docket No. P68.2H-11447-US01*

**Amendments To The Drawings:**

None

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**Remarks**

This Amendment is in response to the Office Action dated April 20, 2006. Objections to all of the currently pending claims have been raised on the basis that they are anticipated or obvious in view of U.S. Design Patent No.: 248,335 (*Cook, et al.*); U.S. Patent No. 6,419,106 (*Bebak*); and U.S. Patent No.: 6,005,901 (*Piereira Da Silva*).

*Cooke, et al.*

*Cooke et al.* does not anticipate claims 1-2, or 8-21, primarily because the patent does not disclose or suggest a gripping means formed in the wall, which wall extends from the base. Instead, the *Cooke et al.* device discloses a conventional wire handle connected to raised tabs attached to the side walls of the device.

The *Cooke et al.* reference is a design patent directed to the ornamental design for a paint pad bucket. The Examiner states that *Cooke et al.* discloses a base, a continuous wall extending up from the base, a gripping means, a dipping section, and an inclined tongue portion, as claimed in claim 1 of the current pending application. The Examiner, points out two sets of alleged gripping means on the *Cooke et al.* paint pad bucket. According to the Examiner, one set is located under the tongue portion, and the other is located adjacent to the dipping section.

It is respectfully submitted that, the Examiner has mischaracterized the *Cooke et al.* reference using 20/20 hindsight of the applicant's disclosure as a template. *Cooke et al.* does not disclose the subject matter of claim 1. For example, the first gripping means alleged by the Examiner is actually a support member for the tongue portion, which extends outwardly from the wall of the paint pad bucket. Its purpose is to prevent the tipping of the bucket when the paint brush is pressed against the tongue. Claim 1 as currently on file requires that the gripping means be formed in the wall, which wall extends up from the base. The alleged gripping means identified by the examiner are not formed in the wall that extends up from the base. Rather, they extend from the wall that extends up from the base. Accordingly, the support members shown in *Cooke et al.*, which are intended to

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provide support to the tongue portion and rigidity when the bucket is resting on the ground, cannot be said to be either formed in the wall, or extending from the base.

As for the second the alleged gripping means, they are two tabs extending from the walls of the paint pad bucket adjacent to the dipping section. Again, these tabs are not formed in the wall. The purpose of the tabs is for attaching the wire handle which is to be used for carrying the bucket.

Moreover, there is nothing in the drawings of *Cooke et al.* to suggest that either alleged gripping means is "sized and shaped to permit a user to grip" them. For example, there is no evidence that either pair of alleged support members or tabs are near enough together that they may be gripped in one hand as contemplated by the present invention. Indeed, if the paint pad bucket depicted in *Cooke et al.* is sized like a conventional paint tray, the pair of support members and tabs would be spaced apart too far to be gripped by a hand of a normal person. Also, it is impossible to determine from the drawings of *Cooke et al.* the absolute size of either alleged gripping means. Thus, they may not be sized for gripping as required by the claim.

Furthermore, a person skilled in the art would not consider other parts of the paint bucket, which are clearly for supporting the tongue portion or the handle, to be a gripping means for carrying the bucket, when a wire handle, which is best suited for that purpose, is clearly shown in the drawings of *Cooke et al.* Obviously, the wire is the gripping means in *Cooke et al.*, and it does not meet the requirements of claim 1.

With respect to claim 2 the Examiner has stated that *Cooke et al.* discloses a container having a center of gravity positioned between the gripping means and the tongue portion. It is respectfully submitted that the Examiner's objection is not well founded for the following two reasons:

The first reason is that claim 2 includes the limitation that the container is sized and shaped to limit the torque to no more than one foot-pound when the container is full of paint. There is nothing in the drawings of *Cooke et al.* from which a person skilled in the art would obtain knowledge of this feature. There is no statement to that effect in the reference, and there is no way to calculate it from

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the figures as they are not necessarily drawn to scale.

The second reason is that the center of gravity of the *Cooke et al.* bucket is likely to the side of the tabs, opposite the tongue portion, and not between the tabs and the tongue portion as the Examiner asserts. This is evident from the fact that the wire handle is curved horizontally away from the tabs and tongue portion when it is configured in the carrying position. Assuming that the tray is intended to not spill paint when lifted by the handle, it is clear that the centre of gravity of the *Cooke et al.* paint bucket is away from both the tabs and tongue portion, and not between the gripping means and the tongue portion, as is required by currently pending claim 2.

Accordingly, the applicant respectfully requests the Examiner to withdraw his objection to claim 2.

With respect to claims 8, 9 and 10, the Examiner has taken the position that *Cooke et al.* discloses at least one recess in the side wall. This is not the case. These claims clearly require that the recess be in the wall, which wall is defined in claim 1 as being continuous and extending up from the base to form a top opening. The *Cooke et al.* device clearly does not have a recess in a continuous wall extending up from the base and forming a top opening. The tabs supporting the tongue portion of the *Cooke et al.* device are shown inwards of the side walls, but they can not be considered to be a continuous wall which extends from the base and forms a top opening. Accordingly, the objections to claims 8, 9 and 10 should be withdrawn.

With respect to claim 11, the Examiner has taken the position that *Cooke et al.* discloses the gripping means having ridges. This position is incorrect since, as discussed above, the tabs supporting the tongue portion can not be considered to be a gripping means. Accordingly, the objection to claim 11 should be withdrawn.

With respect to claims 12, 13, 16 and 17, it is inappropriate for the Examiner to draw conclusions about proportions, angles, and sizes based merely on the drawings in the prior art. The drawings cannot be relied upon to provide such information, as they are not necessarily to scale. Accordingly, the objections to claims 12, 13, 16 and 17 should be withdrawn, as the claimed features

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cannot be said to be apparent from the figures, which as mentioned above, are not necessarily drawn to scale.

With respect to claim 20, which defines the feature of the container being stackable, the Examiner has stated that *Cooke et al.* discloses that the wall extending from the base has an outward taper, and concluded that the *Cooke et al.* device is therefore stackable. In particular, the Examiner has pointed to the lengthwise outward taper of the dipping portion. However, there is no corresponding outward taper in the width-wise direction. Accordingly, there is no indication that the *Cooke et al.* paint pad bucket is stackable. It is therefore submitted that there is nothing in *Cooke et al.* that suggests that the paint pad bucket is stackable, and a close inspection of the drawings supports this proposition. Accordingly, the objection to claim 20 should be withdrawn.

*Bebak*

The Examiner's position that *Bebak* anticipates claims 1-4 is also unsupported, note that the patent does not disclose or suggest a gripping means formed in the wall. Instead, the *Bebak* device discloses a handle attached to a wall of the paint container.

The *Bebak* reference discloses a hand-held vertical paint tray in the form of a jug having walls extending from a base, forming a dipping portion and a tongue portion. A handle is attached to a wall opposite to the tongue portion.

It is respectfully submitted that the handle of the *Bebak* paint tray, being attached to the wall, cannot be said to be formed in the wall as is required by claim 1, as currently on file. In the abstract of the *Bebak* patent there is stated that "[a] handle is attached to a portion of the right wall, left wall, and back wall which extend upwardly." Similarly, at col. 2, line 45, there is stated that "[t]he handle attached to the back outer wall is for carrying as well as holding the paint tray securely while..." It is respectfully submitted that a handle attached to a wall, is plainly different from a handle "formed in the wall", as required by claim 1. Accordingly, the Examiner should withdraw his objection to claim 1.

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There is also no disclosure in *Bebak* of the amount of torque generated at the handle when the paint tray is full of paint. Since as mentioned above, U.S. patent law does not consider the patent drawings to be drawn to scale, it is inappropriate to draw conclusions about proportions, angles, and sizes based merely on the drawings in the prior art. Accordingly, the applicant respectfully submits that it is not possible to calculate the torque generated by the *Bebak* device when full of paint, and therefore requests the Examiner to withdraw his objections to claims 2 to 4 for this reason.

As in the case of the *Cooke et al.* reference discussed above, there is also no disclosure that the *Bebak* paint tray is stackable and there is nothing in the figures to suggest otherwise. Accordingly, the objections to claims 20 and 21 should be withdrawn.

In summary, claim 1, as currently on file, is patentable over the *Cooke et al.* and *Bebak* references, and is therefore allowable. Moreover, in view of the allowability of claim 1, the remaining claims 2 to 21 are also allowable since they depend from an allowable claim. Furthermore, the Examiner's specific objections to claims 1 to 4, 8 to 17, 20 and 21, should be withdrawn as they either mischaracterize the teachings of the cited prior art, or ignore the clear language of the claims.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: August 10, 2006

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